

STATE OF INDIANA)
)
COUNTY OF PORTER)

IN THE PORTER CIRCUIT COURT

SS:

CAUSE NO. 64001-0606-MF-4994

STATE OF INDIANA,

Plaintiff,

v.

EDWARD B. ARMSTRONG, and
D & C HOME CONSTRUCTION, LLC,

Defendants.

FILED

IN OPEN COURT

MAY 31 2006

Dale Brewer
CLERK PORTER CIRCUIT & SUPERIOR COURT

File Stamp
Pursuant To
TRIAL RULE 5(F)

**COMPLAINT FOR BREACH OF CONTRACT, INJUNCTION, RESTITUTION,
COSTS, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, states the Defendants, Edward B. Armstrong and D & C Home Construction, LLC, are in breach of a contract with the Indiana Attorney General, and further petitions the Court, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendant, Edward B. Armstrong, was an individual engaged in the home improvement business from a principal place of business in Porter County, located at 61 Bass Drive, Portage, Indiana, 46368.

3. The Defendant, D & C Home Construction, LLC, is a domestic limited liability company engaged in the home improvement business from its principal place of business in Porter County, located at 61 Bass Drive, Portage, Indiana, 46368.

4. The Defendant, Edward B. Armstrong, is the registered agent of D & C Home Construction, LLC. Upon information and belief, the Defendant, Edward B. Armstrong, is a principal of the Defendant Company and failed to operate the Company as a distinct entity and has used the Company to defraud others.

FACTS

5. Since at least February 18, 2005, the Defendants, Edward B. Armstrong and D & C Home Construction, LLC, have solicited home improvements from Indiana consumers.

A. Allegations Related to Consumer Stephen Madaras' Transaction.

6. On or about February 18, 2005, the Defendants entered into a contract with Stephen Madaras of South Bend, Indiana wherein the Defendants represented they would build a four (4) room addition onto Madaras' home for a total price of Ten Thousand Dollars (\$10,000.00), of which Madaras paid Five Thousand Dollars (\$5,000.00) as a down payment. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contract between the Defendants and Madaras.

7. The Defendants failed to include the following information in the contract with Madaras:

- a. The telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- c. A reasonably detailed description of the proposed home improvements, or a statement the specifications will be provided to the consumer before commencing any work and the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- d. The approximate starting and completion dates of the home improvement; and
- e. A legible printed or typed version of the Defendants' name and the consumer's name placed directly after or below their signatures.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would complete the room addition within a reasonable period of time.

9. The Defendants have yet to begin the work on Madaras' home, and therefore have neither completed the work, nor provided a refund to Madaras.

B. Allegations related to the Assurance of Voluntary Compliance

10. On October 24, 2005, the Porter Circuit Court approved an Assurance of Voluntary Compliance ("AVC") between the Indiana Attorney General and the Defendants, Edward B. Armstrong and D & C Home Construction, LLC. Attached and incorporated by reference as Exhibit "B" is a true and accurate copy of the AVC between the parties.

11. The AVC states in relevant part, "Upon execution of this Assurance, the [Defendants, Edward B. Armstrong and D & C Home Construction, LLC] shall pay consumer restitution in the amount of Five Thousand Dollars (\$5,000.00) to the Office of the Attorney General on behalf of Stephen F. Madaras of South Bend, Indiana."

12. The AVC further states in relevant part, "Upon execution of this Assurance, the [Defendants, Edward B. Armstrong and D & C Home Construction, LLC] shall pay costs in the amount of Three Hundred Dollars (\$300.00) to the Office of the Attorney General."

13. Upon execution of the AVC, the Defendants made an initial payment of Two Thousand Dollars (\$2,000.00) toward consumer restitution. The Defendants' counsel, Peter L. Boyles, stated the Defendants would pay the balance within thirty (30) days.

14. Since the initial payment was made on October 4, 2006, the Defendants have refused, or otherwise failed to pay the balance of the consumer restitution, and have refused, or otherwise failed to pay the costs portion of the AVC.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

15. The service described in paragraph 6 is a "home improvement" as defined by Ind. Code § 24-5-11-3.

16. The transaction referred to in paragraph 6 is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.

17. The Defendants are "suppliers" as defined by Ind. Code § 24-5-11-6.

18. By failing to provide the consumers with completed home improvement contracts, containing the information referred to in paragraph 7, the Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

19. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. The transaction referred to in paragraph 6 is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

21. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

22. The Defendants' representation to Madaras the consumer transaction had sponsorship, approval, performance, characteristics, accessories, uses, or benefits it did not have, when the Defendants knew or reasonably should have known the transaction did not have such, as referenced in paragraph 6, constitutes a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

23. The Defendants' representations they would issue a refund to Madaras, when the representation was false, and the Defendants knew or reasonably should have known the representation was false, as referenced in paragraph 11, constitutes a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

24. The Defendants' representations to Madaras the Defendants would complete the room addition within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraph 7, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT III-KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

25. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above.

26. The misrepresentations and deceptive acts set forth in paragraphs 6 and 8 were committed by the Defendants with the knowledge and intent to deceive.

COUNT IV-BREACH OF CONTRACT

27. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. By failing to abide by the terms of the Assurance of Voluntary Compliance and not fully paying the consumer restitution and costs, as referenced in paragraph 14, the Defendants have breached their agreement with the Indiana Attorney General's Office.

29. As a result of the Defendants' breach, the Indiana Attorney General's Office, as well as the consumer benefiting from the Assurance of Voluntary Compliance, Stephen Madaras, have been damaged.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Edward B. Armstrong and D & C Home Construction, LLC, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
 - i) The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - ii) The name and address of the Defendants and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
 - iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
 - iv) A reasonably detailed description of the proposed home improvements;

- v) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
 - vi) The approximate starting and completion date of the home improvements;
 - vii) A statement of any contingencies that would materially change the approximate completion date;
 - viii) The home improvement contract price; and
 - ix) Signature lines for the Defendants or the Defendants' agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

- d. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or reasonably should have known it does not have;
- e. representing, expressly or by implication, the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendants know or should reasonably know the representation is false;
- f. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and
- g. soliciting or engaging in a home improvement transaction without a license or permit required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, Edward B. Armstrong and D & C Home Construction, LLC, for the following relief:

- a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to Stephen Madaras, pursuant to Ind. Code § 24-5-0.5-4(d);

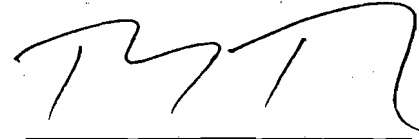
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for home improvements, including but not limited to Stephen Madaras, in an amount to be determined at trial;
- c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- f. on Count III of the Plaintiff's complaint, consumer restitution in the amount of Three Thousand Dollars (\$3,000.00), payable to the Office of the Attorney General, on behalf of Stephen F. Madaras of South Bend, Indiana;
- g. on Count III of the Plaintiff's complaint, costs of Three Hundred Dollars (\$300.00), payable to the Office of the Attorney General; and

h. all other just and proper relief.

Respectfully Submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Indiana Government Center South
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

PROPOSAL

ED ARMSTRONG
D & C Construction
P.O. Box 804
P.O. Box 746368

214065824

PROPOSAL NO.

SHEET NO.

DATE

PROPOSAL SUBMITTED TO:

NAME

Stephen Madaras

ADDRESS

PHONE NO.

WORK TO BE PERFORMED AT:

ADDRESS

DATE OF PLANS

ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

Room Add. Built off Pent.

Roofing to match home

2 - Doors 36"

Siding to match home

7 - Windows

Soft white

1 - Area above

15' x 15'

OSB on roof

2x6 / 2x8 Rafter for roof

8" x 8" x 16" Block foundation

8" x 16" x 8" Footing

All excavations

All clean up

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

5000 Down

5000 After complete

Dollars (\$ 10000)

with payments to be made as follows.

Check 108 2-18-05

Respectfully submitted

Edward Armstrong

Per

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Note — This proposal may be withdrawn by us if not accepted within ____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature

Stephen L. Madaras

Date

Signature

MADE IN USA

PROPOSAL

STATE'S EXHIBIT

A

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

IN THE PORTER CIRCUIT COURT

CAUSE NO. LA05-0510-PL9134

IN RE: EDWARD B. ARMSTRONG, and)
D & C HOME CONSTRUCTION, LLC) AVC NO. 05-042
)
Respondents.)

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, and the Respondents, Edward B. Armstrong and D & C Home Construction, LLC, enter into an Assurance of Voluntary Compliance ("Assurance") pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. The Respondent, Edward B. Armstrong, is an individual engaged in the home improvement business, with a principal place of business located in Porter County at 61 Bass Drive, Portage, Indiana 46368, and transacts business with Indiana consumers.
2. The Respondent, D & C Home Construction, LLC is a domestic limited liability company engaged in the home improvement business, with a principal place of business located in Porter County at 61 Bass Drive, Portage, Indiana 46368, and transacts business with Indiana consumers.
3. The terms of this Assurance apply to and are binding upon the Respondents, their employees, agents, representatives, successors, and assigns.

4. The Respondents acknowledge the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code § 4-6-9-4 and Ind. Code Ch. § 24-5-0.5.

5. The Respondents acknowledge they have been advised the Attorney General's role in this matter is to serve as counsel for the State of Indiana and the State of Indiana has not given the Respondents any legal advice regarding this matter. The Respondents expressly acknowledge the State of Indiana has previously advised the Respondents to secure legal counsel prior to entering into this Assurance for any legal advice the Respondents require.

6. The Respondents agree, in every home improvement transaction they enter into, they will provide a completed home improvement contract complying with Ind. Code § 24-5-11-10 to the consumer before it is signed by the consumer. The Respondents agree the contract must contain at a minimum the following:

- a. The name of the consumer and the address of the residential property that is the subject of the home improvement;
- b. The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- c. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- d. A reasonably detailed description of the proposed home improvements;
- e. If the description required by Indiana Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- f. The approximate starting and completion dates of the home improvements;

- g. A statement of any contingencies that would materially change the approximate completion date;
- h. The home improvement contract price; and
- i. Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legibly printed or a typed version of that person's name placed directly after or below the signature.

7. The Respondents agree each of its home improvement contracts will be in a form each consumer who is a party to the contract can reasonably read and understand, as required by Ind. Code § 24-5-11-10(b).

8. The Respondents agree, before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the Respondents will have agreed unequivocally by written signature to all of the terms of the home improvement contract, as required by Ind. Code § 24-5-11-11.

9. The Respondents agree they will give a fully executed copy of the home improvement contract, showing the dates the Respondents and each consumer executed the contract, to the consumer immediately after the consumer signs it, as required by Ind. Code § 24-5-11-12.

10. The Respondents, in soliciting and/or contracting with consumers, agree to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*

11. The Respondents agree to refrain from conducting any home improvements until they have first obtained all necessary licenses or permits required by law.

12. The Respondents, in soliciting and/or contracting with consumers, agree they will not represent the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses or benefits it does not have which the Respondents know or should reasonably know it does not have, as required by Ind. Code § 24-5-0.5-3(a)(1).

13. The Respondents, in soliciting and/or contracting with consumers, agree to obtain the necessary permits or other licenses as required by law, as required by Ind. Code § 24-5-11-9 and § 24-5-0.5-10(a)(1)(A).

14. The Respondents, in soliciting and/or contracting with consumers, agree to refrain from conducting any business activity in the State of Indiana, unless those activities are in full compliance with the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3.

15. Upon execution of this Assurance, the Respondents shall pay consumer restitution in the amount of Five Thousand Dollars (\$5,000.00) to the Office of the Attorney General on behalf of Stephen F. Madaras of South Bend, Indiana.

16. Upon execution of this Assurance, the Respondents shall pay costs in the amount of Three Hundred Dollars (\$300.00) to the Office of the Attorney General.

17. The Respondents shall not represent the Office of the Attorney General approves or endorses the Respondents' past or future business practices, or execution of this Assurance constitutes such approval or endorsement.

18. The Respondents shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

19. The Office of the Attorney General shall file this Assurance with the Circuit Court of Porter County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 26 day of Sept, 2005.

STATE OF INDIANA

STEVE CARTER
Indiana Attorney General

By:

Terry Tolliver
Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49
Office of Attorney General
302 W. Washington, 5th Floor
Indianapolis, Indiana 46204
Telephone: (317) 233-3300

RESPONDENTS

Edward B. Armstrong
EDWARD B. ARMSTRONG

D & C Court
D & C HOME CONSTRUCTION, LLC

Edward Armstrong
Printed Name

owner
Title

APPROVED this 24 day of Oct, 2005.

MR. Hays
Judge, Porter County Circuit Court

Distribution:

Terry Tolliver
Office of the Attorney General
302 W. Washington St., IGCS 5th Floor.
Indianapolis, IN 46204

Edward B. Armstrong and
D & C Home Construction, LLC
61 Bass Drive
Portage, IN 46368